

WASHINGTON - Court rejects Qwest appeal of UTC reporting requirements

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The Court of Appeals of Washington (Division Two) earlier this week denied an appeal filed by Qwest Corp. and found that the Utilities and Transportation Commission did not exceed its statutory authority in enacting two new reporting requirements related to the transfer of cash from utilities to their affiliated companies, and the filing of reports detailing the activities between telecom companies and their affiliated companies.

Qwest specifically challenged two UTC requirements: (1) the cash and transfer rule requiring non-investment grade utilities to give the UTC five days notice before making large cash transfers to subsidiaries or affiliated companies, and (2) the subsidiary reporting rule that requires all telecom companies to file annual reports describing nearly all transactions between the parent company and its subsidiaries and affiliated companies.

Qwest -- which is subject to both the cash and transfer rule and the subsidiary reporting rule -- asked a trial court to invalidate the UTC's rules, but the court denied the request. On appeal, Qwest argued that the trial court applied the incorrect standard of review, and that the UTC exceeded its statutory authority in enacting the rules.

Although the appeals court agreed with Qwest that the trial court applied the wrong standard by asking Qwest to show substantial prejudice when only a showing of impairment was required, it said the "error was harmless." The appeals court said that error without prejudice is not grounds for reversal and that error is not prejudicial unless it affects the outcome of the case.

In this case, the trial court did properly require Qwest to establish that the UTC had exceeded its statutory authority, which Qwest could not do. The appeals court pointed out that the rules were enacted under two state statutes which give the UTC broad authority to require any public service company to file periodical and special reports, and allow the UTC to at any time inspect the accounts, books, papers, and documents of any public service company.

In coming to its decision, the appeals court struck down Qwest's argument that imposition of these rules applies to more than just public service companies, but also to subsidiaries and affiliates which may not be public service companies. The rule, the court pointed out, only requires the actual public service company to report on the transfers of cash and other activities. Therefore, the court said that the UTC is not imposing any reporting requirements on the subsidiaries or affiliates.

The appeals court said it did find not merit in any of Qwest's arguments and that since Qwest did not meet its burden of establishing that the UTC exceeded its statutory authority in enacting the rules, it will not invalidate the reporting requirements. (Case No. 34523-4-II) - Carrie DeLeon, carrie.deleon@wolterskluwer.com